

### III. REMARKS

Claims 1-13 are pending in the application. Claims 1-13 are subject to a three way restriction requirement, viz.

I. Claims 1-4 drawn to compounds

II. Claims 5-8 and 11-13 drawn to a process of preparing

III. Claims 9 and 10 drawn to a process of preparing.

Applicant traverses this restriction requirement.

As stated by the examiner, Inventions I and II are related as process of making and product made. Pursuant to MPEP 806.05(f) the inventions are distinct and a restriction may be properly required when either 1] the product may be made by different means or 2] the process may be used to make other products.

Neither of the conditions precedent specified in the quoted MPEP section are present in this case. More specifically, the basis for the restriction requirement specified by the examiner is incorrect. That the products may be made by other processes is incorrect.

The products disclosed in this application are new and have not been disclosed in the prior art. It is therefore logically impossible for the art to show that they may be made by a different process, whether or not it is materially different. Thus, the examiner has not made out a *prima facie* case for restriction.

Applicant therefore requests that the restriction requirement between groups I and II be withdrawn.

The examiner states that the inventions of groups II and III are able to produce chemically different compounds.

Applicant traverses this restriction requirement.

Claims 9 and 10 do not relate to a process independent of the process of claim 5. Claims 9 and 10 further define and claim how the reaction medium of claim 5 was obtained. The process of preparing the compound of group I therefore encompasses the process steps of all of claims 5-13.

Applicant therefore requests that the restriction requirement between groups II and III be withdrawn.

For the sake of completeness of response, applicant elects to prosecute claim group I.

Enclosed is a check in the amount of \$120.00 for a one-month extension of time. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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Reg. No. 44,004

22 April 2005

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Date

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to the Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: April 22, 2005

Signature: Meaghan Baye  
Person Making Deposit

